

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Submitted - November 15, 2006

ROBERT W. SCHMIDT, J.P.
STEPHEN G. CRANE
REINALDO E. RIVERA
PETER B. SKELOS
ROBERT J. LUNN, JJ.

2006-03334

DECISION & ORDER

Karen Holley, respondent, v Salsa, Inc.,
et al., appellants.

(Index No. 18857/04)

Baker, McEvoy, Morrissey & Moskovits, P.C., New York, N.Y. (Holly E. Peck of counsel), for appellants.

Elliot Iffraimoff & Associates, P.C., Forest Hills, N.Y. (David E. Waterbury of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal from an order of the Supreme Court, Kings County (Harkavy, J.), dated February 15, 2006, which denied their motion for summary judgment dismissing the complaint on the ground that the plaintiff did not sustain a serious injury within the meaning of Insurance Law § 5102(d).

ORDERED that the order is affirmed, with costs.

The defendants made a prima facie showing that the plaintiff did not sustain a serious injury through the affirmed medical reports of their examining neurologist and orthopedic surgeon (*see Toure v Avis Rent a Car Sys.*, 98 NY2d 345; *Gaddy v Eyler*, 79 NY2d 955). In opposition, the plaintiff submitted an affirmation from her treating physician specifying the decreased range of motion in her lumbar and cervical spines as evidenced by objective findings made shortly after the subject accident, as well as on a recent examination, along with evidence of herniated discs and disc bulges as confirmed by his reading of magnetic resonance imaging films. The plaintiff's treating physician

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also asserted that the plaintiff's injuries were permanent and causally related to the subject motor vehicle accident. This evidence was sufficient to raise a triable issue of fact (*see Toure v Avis Rent a Car Sys., supra; Clervoix v Edwards*, 10 AD3d 626, 627; *Acosta v Rubin*, 2 AD3d 657, 659).

SCHMIDT, J.P., CRANE, RIVERA, SKELOS and LUNN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court